

**EXHIBIT B**

**END USER SOFTWARE LICENSE AGREEMENT**



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End User Software License Agreement

Subject to the terms and conditions herein, Prosite Business Solutions, LLC ("Prosite", "Our", "Us") grants to Circuit City ("Client", "You", "Their", "They") a limited, revocable, non-exclusive, non-transferrable license to use its ProBusiness Tools software including its Prosite website, services and related software ("Software") for Client's own internal business uses together with any associated manuals or other related printed materials, whether available on paper or through Our website, ("Documentation"), and only in accordance with the terms of this Agreement. Use of some third party materials included in the Software may be subject to other terms and conditions typically found in a separate license agreement. Prosite Business Solutions, LLC owns all intellectual property in the Software.

**NOTICE TO USER:** PLEASE READ THIS CONTRACT CAREFULLY. BY USING ALL OR ANY PORTION OF THE PROBUSINESSTOOLS ("SOFTWARE") CLIENT ACCEPTS ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. CLIENT AGREES THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN NEGOTIATED AGREEMENT SIGNED BY CLIENT. THIS AGREEMENT IS ENFORCEABLE AGAINST CLIENT AND ANY LEGAL ENTITY THAT OBTAINED THE SOFTWARE AND ON WHOSE BEHALF IT IS USED. IF CLIENT DOES NOT AGREE, DO NOT SIGN THIS AGREEMENT OR USE THIS SOFTWARE.

1. Duties of Prosite. This section will outline services provided under this Agreement or under a separate Master Service Agreement ("MSA") and Scope of Work ("SOW").
  - 1.1. Prosite will create for the Client a private database to be accessed through ProBusinessTools<sup>SM</sup> Software or PBTBrowser/PBTUpdater via the internet. Prosite agrees to never provide to any client, non-employee or subcontractor of Prosite the ability to create a direct connection to the Client database outside of its normal usage through the software tools. Prosite agrees to take all reasonable steps to secure any Client data that is stored in the Software or transmitted by Prosite or any subcontractor.
  - 1.2. Prosite will create one (1) Admin login that will be provided to the Client IT Project Manager. This login will be used to manage Client's account.
  - 1.3. Prosite will attempt to design the Software to meet Client's needs but does not warrant the Software to include any functionality or to perform any specific tasks or that current tasks will remain in the Software package with the exception of custom development which will be outlined in addendum A attached hereto. In the event that tasks are removed, resulting in a material change to the functionality of the Software, Client agrees to provide Prosite notice within five (5) business days. Prosite will then have an additional two (2) days to investigate and cure any issue, after which time Client may terminate this Agreement without penalty after and shall be entitled to a prorated refund of any fees paid in advance.
  - 1.4. Custom Software development will be provided under the SOW at an hourly rate of \$75.00. Client understands that once any custom development is rolled into the Software it becomes part of the Software and is owned by Prosite. Any exceptions will be outlined in separate agreement signed by both parties.
  - 1.5. Prosite will train twenty five (25) personnel within Client's organization (chosen by Client) and assist in any way reasonably necessary to help establish a training plan for the use of the Software by Client's organization.
  - 1.6. Prosite's billing cycle will be based on a one (1) month period starting on the 28<sup>th</sup> of each month and ending on the 27<sup>th</sup> of the next month. Invoices will be emailed and mailed to a designated Client contact. Invoices will be payable net thirty (30) days upon receipt of invoice. Should Client fail more than sixty (60) days past due, Prosite may prevent Client's access to the Software until a mutually acceptable resolution is attained.
  - 1.7. Prosite will impose a 10% fee on all returned checks.
  - 1.8. Prosite will only reset the Admin password if a written request is received from the Client IT Project Manager or officer of Client.
  - 1.9. Prosite will perform nightly back-ups of Client's database.
  - 1.10. The Service Level Agreements ("SLA") will not start until thirty (30) days after both parties signoff on the rollout being successful. SLAs are as follows:

- 1.10.1. **Outage SLA:** Prosite will provide 24 hour by 7 days per week coverage for outage situations.

Outages caused by Client, Client's data, networks or grids outside the control of Prosite are not considered missed SLA's as long as Prosite has supported the effort to determine the root cause of the outage.

Outage situations will be responded to within fifteen (15) minutes, and will be resolved within one (1) hour

- 1.10.2. **Critical Questions (CQ) SLA:** Prosite will provide 24 hour by 7 days per week coverage for critical Software questions (Examples - Screen does not load, 404 or page can not be displayed error, users can not log in, no techs show on calendar, etc.)

Critical Software questions will be responded to within (15) minutes. Prosite will remain on the phone with the Client's representative until the problem is resolved. Prosite will resolve Software questions within one (1) hour unless it is a setup or training issue. A setup or training issue may exceed one (1) hour to completely resolve.

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1.10.3. **Non-Critical Questions SLA:** Prosite will provide non-critical Software question support between the hours of 9 AM and 5 PM Eastern, Monday through Friday excluding Prosite holidays, New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Day.

Non-critical Software questions will be responded to within thirty (30) minutes. Questions will be resolved within one (1) hour.

For Outage and Critical Questions, Prosite will provide an emergency number and standard operating procedure ("SOP") that must be followed. If the call is determined not to be an outage or issue related to the Software but is identified as a Client problem or user error, a notification will be given to the Client IT Project Manager. Client will make every effort to ensure CQ and Outage procedures are followed. For all Outage and Critical Questions, Prosite will limit its support and accessibility to the IT Project Manager, IT Manager, IT Director, Business Director, Operations Manager, VP of Services and five (5) additional designated Client personnel. For all Non-Critical Software Questions and training issues, Prosite will limit support and accessibility to 25 personnel. Client is responsible for appointing this personnel list and will provide said list to Prosite every time this list is changed. Prosite is not responsible for supporting non-listed users or personnel.

1.11. A maintenance window of 2am to 6am seven days a week will be set aside for server downtime and maintenance. No notice needs to be given or approved during this time and no SLA will be considered missed during this time frame.

1.12. Prosite will guarantee a 99% software and server uptime during non-maintenance hours

1.13. If SLAs are missed more than twice during a 30 day period, or unscheduled downtime outside the maintenance window exceeds 6 hours during a 30 day period, Prosite will provide a credit, not to exceed, of thirty percent (30%) of the following month's Minimum Monthly Fee. Client may determine a lesser penalty depending on severity of outage. SLA penalties will only be calculated if outage is within the control of Prosite or its hosting provider.

2. Duties of Client

2.1. Client agrees to access Software via the internet only using Microsoft Internet Explorer 6.0 or greater.

2.2. It is Client's responsibility to create, maintain, update, and completely manage its data and users via the Software.

2.3. Client agrees to be solely responsible for managing and safeguarding passwords used in the Software by admins, installers, clients, customers, staff, etc.

3. Compensation - Client agrees to pay Prosite for its services as listed hereunder:

3.1. Setup Fee - \$12,000 - This amount, which will be due within 4 business days after signing of this Agreement, will include usage of the software for the May 2006 pilot.

3.2. Monthly Fee of \$18,000.00 ("Minimum Monthly Fee") to be paid each month for the next month's use of Prosite Software, services and web site. The Minimum Monthly Fee includes up to 1400 individual user licenses and up to 30,000 orders per month.

3.3. Through a separate statement of work, Prosite will build a web portal to allow unlimited in-store personnel to look up orders in Client's POS system, transfer that order into ProBusinessTools and schedule an appointment with its customers. The portal will have limited functionality and therefore the store personnel who only use the portal will not be considered users under this Agreement. Prosite will host this portal free of charge for the first ninety (90) days to determine the impact it has on its server resources. Prosite, at any time after the first ninety (90) days, may, upon sixty (60) days notice, require Client to pay for portal hosting. Client reserves the right, at no additional charge, to alternatively host the portal using a non-Prosite alternative.

3.4. If the number of orders exceeds an average of 36,000 for any continuous six (6) month period or the number of Client personnel using the Software exceeds an average of 1680 for any continuous six (6) month period, then the existing Monthly Fee will increase by 20% the following month and shall continue until the average of such orders or number of Client personnel using the Software declines below the agreed upon levels set in Section 3.2, at which time, the Minimum Monthly Fee will be reestablished. In no event may the reduction in monthly fee go below the Minimum Monthly Fee stated herein. Notification of the rate increase will be given to Client at least twenty five (25) days prior to the next invoice. Similar subsequent increases will result in like rate increases.

3.4.1. In the event that Prosite is retained by Client to do software development as provided in Section 1.4 above or through a separate SOW, and if the parties complete the one (1) year term detailed at Section 5 below, Prosite will refund to Client over a term not to exceed three (3) months, 10% of all fees collected for such custom software development through the end of such one (1) year term.

3.4.2. If Client processes credit cards or checks via the Software, Client must choose from gateways already set up in Software and Client also agrees to pay a \$1.00 per transaction fee. A list of approved vendors is available by contacting Prosite's support department.

4. Conduct of All Users on Software



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- 4.1. Limitations on Use. Client may use Prosite's Software, services and website ("Site"), to access its data unless the product or the content, under any applicable state or federal law, statute or regulation: (i) constitutes a prohibited item or otherwise prohibited action under any third party agreements, (ii) knowingly infringes on any third-party intellectual property rights or other proprietary rights, (iii) constitutes libel or slander or is otherwise defamatory, or (iv) is counterfeited, illegal, stolen, or fraudulent. To the best of Client's knowledge, Client's information (or any items listed): (a) shall not be false, inaccurate or misleading; (b) shall not be fraudulent or involve the sale of counterfeit or stolen items; (c) shall not knowingly infringe on third party's copyright, patent, trademark, trade secret or other proprietary rights of publicity or privacy; (d) shall not violate any law, statute, ordinance or regulation (including, but not limited to, those governing export control, consumer protection, unfair competition, anti discrimination or false advertising); (e) shall not be defamatory, trade libelous, threatening, harassing or abusive; (f) shall not be obscene, contain or promote child pornography, adult content, extreme violence, or foul language or otherwise be harmful to minors; (g) shall not contain or promote unsolicited email SPAM, viruses, Trojan horses, worms, time bombs, cancelbots, Easter eggs or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information; (h) shall not provide, sell, or offer to sell controlled substances, illegal drugs and drug contraband, pirated materials, pornography or sexual products, programs that attack others, illegal goods, escort services, instructions on making, assembling, or obtaining illegal goods or weapons, information used to break copyright or trademark violations, to destroy others' property, or to harm any people or animals; (i) shall not create liability for us or cause us to lose (in whole or in part) the services of our ISPs or other suppliers; and (j) shall not promote or consummate any transaction that was initiated using Prosite's Software, services, Site that by paying Prosite could cause Prosite to violate any applicable law, statute, ordinance or regulation. Client is solely responsible for the content entered by Client into the Site using Prosite's Software.
- 4.2. Compliance with Law. Both parties agree to comply with all applicable laws, statutes, and regulations. Prosite's services, Site and Software may only be used for lawful purposes and in a lawful manner. Client may not register under a false name or use an invalid or unauthorized credit card. Prosite reserves the right to reasonably monitor any activity and content associated with Client's use of Prosite's services, Site, or Software. In the Event Prosite receives a complaint or reported violation of Prosite's policies, Prosite agrees to provide notice to Client within five (5) business days. Client will then have an additional thirty (30) days to investigate and cure any confirmed violation. To the extent any violation remains recurring or any complaint remains offending, Prosite may issuing warnings, suspend or terminate the services, and/or remove of any materials on the Site. Prosite reserves the right to report any activity that is determined to violate a law or regulation to appropriate law enforcement officials or regulators and will notify Client immediately of such activity. Prosite also reserves the right to access and disclose any information relating to Client's use of Prosite's services, Site or Software, if such information is necessary to comply with any lawful governmental request. Prosite reserves the right to remove, screen, or edit any content that is determined to violate applicable law.
- 4.3. Sales/Use Taxes. It will be the Client's responsibility to determine whether sales or use taxes apply to any transactions in which Client participates, and to collect, report and remit the correct tax to the appropriate tax authority. Prosite assumes no responsibility for determining whether sales or use taxes apply, or for collecting, reporting, or remitting any sales or use taxes arising from any transaction performed by Client.
- 4.4. Client will not interfere or disrupt networks connected to the service or Site. Client will not attempt to gain unauthorized access to the Site, Software or other computer systems and Client will not interfere with another user's use of Prosite's services, Site and Software.
- 4.5. Proprietary Rights. Client acknowledges and agrees that Prosite's Software, services, Site and database contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Client further acknowledges and agrees that copyrights, trademarks, service marks, patents, or other proprietary rights and laws protect information provided to Client in connection with its use of Prosite's Software, services, Site. Except as expressly authorized by Prosite, Client agrees not to modify, sell, distribute or create derivative works based on the services or the Software, in whole or in part. Further, Client may not reverse engineer, recompile, alter, modify, disassemble or otherwise attempt to derive source code from Prosite's Software, services, or Site. Prosite or ProBusinessTools and other names, logos, icons and marks identifying Prosite's products and services are trademarks of Prosite and may not be used without the prior written permission of Prosite.
5. Press Release. Neither Party shall, without the prior written consent of the other Party and such consent not to be unreasonably withheld, refer to the other Party or attribute any information to the other Party in any external communication for any purpose, including without limitation press releases, web sites, offering memoranda, and conversations with analysts.
6. Term. The Term of this Agreement shall be for a period of one (1) year from the date this Agreement is signed by the last signatory. During such one (1) year Term, either party may terminate this Agreement for convenience following ninety (90) days written notice to the other party. Minimum Monthly Fees shall continue during such ninety (90) day period. The terminating party agrees that at the end of the 90 days they shall pay an additional fee equal to three (3) times the Minimum Monthly Fee as liquidated damages in full and final settlement, which amount shall be payable over a period of up to three (3) months ("Termination Fee") to the remaining party. At the end of the Term this Agreement will continue on a monthly basis until terminated upon 90 day written notice to the other party, extended or another



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agreement is negotiated. Minimum Monthly Fees shall continue during such ninety (90) day notice period and no termination fees apply.

- 6.1. User Eligibility Requirements. Client must not be a minor or unable to form contracts under applicable laws.
- 6.2. Registration. Client must complete the registration process and execute this Agreement prior to and in order to use Prosite's Site, Services, and Software. By registering Client will be providing Prosite with personal and/or company information. Client agrees to keep information current, complete and accurate. If at any time Prosite discovers that any information provided is incorrect and/or incomplete Prosite may terminate Client's access to Prosite's Site, Services, and Software immediately. Prosite reserves the right to refuse registration and use of Site, Services, or Software based on Prosite's sole discretion. BY REGISTERING FOR AND USING PROSITE'S SOFTWARE, SERVICES, AND SITE, THEY ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, WITHOUT ANY MODIFICATION. BY CONTINUING TO USE THE SOFTWARE, SERVICES AND SITE THEREAFTER
7. Intellectual Property Ownership, and Copyright Protection. The Software is the intellectual property of and is owned by Prosite Business Solutions, LLC. The structure, organization and source code of the Software are the valuable trade secrets and confidential information of Prosite Business Solutions, LLC. The Software is protected by law, including without limitation the copyright laws of the United States and other countries, and by international treaty provisions. This Agreement does not grant Client any intellectual property rights in the Software or any aspects thereof, and all rights not expressly granted are reserved by Prosite Business Solutions, LLC. Client agrees to keep all information, including but not limited to contract information, updated. At Prosite's request Client will provide information required for software management
8. Ownership of data in Software. Client owns the data that is stored in its tables. If Client chooses to end this Agreement with Prosite, the data will be downloaded and provided to Client in a usable electronic format within five (5) business days of request, provided that Client does not owe Prosite any undisputed fees. If fees are owed, the data will be released upon payment to Prosite. Prosite will not delete any data unless requested by the Client IT Project Manager or one hundred forty five (145) days have elapsed since termination of this Agreement.
9. Restrictions
  - 9.1. Non-Employees -- Prosite employees shall have access to Client's information for purposes of providing support to Client.
  - 9.2. Duplication. Client shall not copy the Software, including, but not limited to the PBTBrowser and Updater.
  - 9.3. No Modifications. Client shall not modify, adapt or translate the Software. Client shall not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software. Client may customize the database via the ProBusinessTools provided to Client for the express purpose of managing its business. Client may not otherwise alter or modify the Software. The Software is licensed and distributed by Prosite Business Solutions for managing and maintaining customer and Client information. Client is not authorized to integrate or use the Software with any other software without the written approval from Prosite. If permission is granted this contract will be amended to include limitations of such integration. Requests for information should be directed to the Prosite Legal Department.
  - 9.4. Software Features. The Software may contain features and functionality that do not appear to all users. The Software features will only be activated when requested by Client. Client agrees not to access, or attempt to access, modify, or disable Software features or otherwise circumvent the permissions that control activation of such Software features. Client may only use the Software features that have been enabled by Prosite and in compliance with a valid license from Prosite. No other use is permitted.
  - 9.5. Transfer. Client may not, rent, lease, sublicense, pledge, encumber, assign or otherwise transfer its rights in this Agreement, including but not limited to the Software, or authorize all or any portion of the Software to be copied onto another user's computer except as may be expressly permitted herein. Client may, however, transfer all its rights to use the Software to another legal entity provided that: (a) Client also transfers (i) this Agreement, and (ii) the Software and all other software or hardware bundled or pre-installed with the Software to such entity; (b) Client retains no copies, including backups and copies stored on a computer; and (c) the receiving party accepts the terms and conditions of this Agreement and any other terms and conditions upon which Client legally purchased a license to the Software. The receiving party must sign a copy of the Agreement and a letter from Client must be received by the receiving party Prosite to validate transfer and confirm that the new party understands and agrees in writing to pay the costs associated with use of Software.
  - 9.6. Third Party Links. The Software allows access to internet sites maintained by third parties. Prosite does not operate or control, in any respect, any information, products or services on such third-party sites. Prosite has included such third party links for Client's convenience. However, Prosite's inclusion of such third party links on Prosite's Site(s) does not constitute an endorsement. Client assumes full responsibility for use of third party sites, regardless of any link to such site that Prosite may provide. Access to and use of any third party sites, including any goods, services or information made available from such sites, is governed by the terms and conditions found at each third party site, if any. Third party sites are not owned or operated by Prosite. CLIENT'S USE OF THIRD PARTY SITES IS AT ITS OWN RISK. PROSITE MAKES NO WARRANTIES, CONDITIONS, INDEMNITIES, REPRESENTATIONS OR TERMS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE AS TO ANY OTHER MATTERS, INCLUDING BUT NOT LIMITED TO NON-INFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, INTEGRATION, ACCURACY, SECURITY, AVAILABILITY.

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SATISFACTORY QUALITY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH  
RESPECT TO THE THIRD PARTY SITES

10. Updates. All Updates are provided to Client on a license forwarding basis. Client agrees it will use all updates and voluntarily terminates right to use any previous version of the Software once updates are implemented. Client and Prosite will work out an update schedule and define an approval process before changes are implemented into production. Prosite will provide a notification to the Client IT Project Manager that includes a list of changes that are being implemented.
11. NO WARRANTY. The Software is delivered to Client "AS IS" and Prosite makes no warranty as to its use or performance except as outlined herein. PROSITE DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS CLIENT MAY OBTAIN BY USING THE SITE, SOFTWARE AND/OR SERVICES. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM TO THE EXTENT TO WHICH THE SAME CANNOT OR MAY NOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, PROSITE MAKES NO WARRANTIES CONDITIONS, REPRESENTATIONS, OR TERMS (EXPRESS OR IMPLIED WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING WITHOUT LIMITATION NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, INTEGRATION, SATISFACTORY QUALITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OF THE SITE, SOFTWARE AND/OR SERVICES.
- 11.1. Prosite makes no warranty that the service will meet Client's requirements. Prosite also does not make any warranty to any level of results that Client may or may not obtain by using the Software, services, or Site. Prosite does not warranty accuracy of any information obtained through the Software, services or Site or that any defects do not exist or may not exist in the future.
- 11.2. Client agrees that any data or information downloaded via the Software is done at Client's own risk and, as such, Client is solely responsible for any damage to its computer systems or any loss of data resulting therefrom
12. LIMITATION OF LIABILITY. EXCEPT WITH RESPECT TO 1) THE INDEMNIFICATION OBLIGATIONS SET FORTH HEREIN, 2) PROSITE'S CONFIDENTIALITY OBLIGATIONS, OR 3) INSTANCES OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, IN NO EVENT WILL PROSITE BE LIABLE TO CLIENT FOR ANY DAMAGES, CLAIMS, COSTS, OR OTHER LIABILITIES WHATSOEVER OR ANY CONSEQUENTIAL, DIRECT, INDIRECT, INCIDENTAL DAMAGES, OR ANY LOST PROFITS OR LOST SAVINGS. REGARDLESS OF WHETHER A PROSITE REPRESENTATIVE HAS BEEN ADVISED OF THE POSSIBILITY OF SAME OR FOR ANY CLAIM BY ANY THIRD PARTY ARISING FROM OR IN ANY WAY RELATED TO THIS AGREEMENT, THE FOREGOING LIMITATIONS AND EXCLUSIONS APPLY TO THE EXTENT PERMITTED BY APPLICABLE LAW IN THEIR JURISDICTION.
- 12.1 Release of Liability. Due to the fact that Prosite is not involved with any transaction between Client and Client's customers, or between Client and Clients vendors, Client releases Prosite (and Prosite's subsidiaries, affiliates, officers, members, directors, shareholders, customers, suppliers, service providers, agents, and employees) from any claims, costs, demands, damages and other liabilities of any kind and nature, known and unknown, arising from any dispute Client now has or later may have with or against any customer relating to its use of the Software, services, and Site. This section does not apply to the indemnification, which is addressed in Section 12.2 below
- 12.2. Indemnification. Each party shall indemnify, defend and hold harmless the other party and its affiliates, employees, agents, and representatives from and against any and all costs, liabilities, losses, and expenses (including, without limitation, attorneys' fees) resulting from any claim, suit, action, or proceeding brought by a third party against such other party and its affiliates, employees, agents, or representatives, arising out of any breach of any of its representations, warranties, covenants, or agreements set forth in this Agreement. Further, Prosite shall indemnify defend and hold harmless Client from and against any final judgment by a court of competent jurisdiction, including reasonable attorneys' fees, that the Prosite Software, services, or Site infringe any patent, or any copyright, or any trade secret of a third party. The failure of a party to provide to the other party notice of any such claim, suit, action, or proceeding shall not relieve it of its obligations hereunder, except to the extent that it shall have been materially prejudiced by such failure.
13. Confidential Information. During the term of this Agreement and during any renewal term and for five (5) years thereafter neither party shall use (except for the purpose of implementing this Agreement) or disclose to any third party (except a party's subcontractors and independent contractors for the purpose of implementing this Agreement and who are bound by confidentiality obligations at least as restrictive as those contained in this section), without the prior written permission of the disclosing party, any confidential or proprietary information disclosed hereunder (hereinafter "Confidential Information"), except as may be required by a court of law or government action. Confidential Information includes, but is not limited to, all information, whether written or oral, and in any form, including without limitation, all Client data stored on its systems, information relating to the terms of this Agreement, research, development, sales, products, methods of manufacture, trade secrets, business plans, customers, vendors, finances, personnel data, third party proprietary or confidential information (including the confidential information of a party's subcontractor), and other material or information declared in writing as proprietary by the disclosing party, or which a reasonably prudent person would consider to be confidential and proprietary to the disclosing party and relating to the current or anticipated business which is disclosed directly or indirectly to the receiving party. Neither party shall be liable to the other for Confidential Information which: (i) is already lawfully known to the receiving party at the time of disclosure; (ii) is in or subsequently enters the public domain (or is or becomes publicly available) without any violation of this Agreement by the receiving party; (iii) the receiving party obtains from a third party source not under a known obligation of confidentiality to the disclosing party; or (iv) which is independently developed or acquired without use or reference to

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the Confidential Information, as evidenced by appropriate documentation or other competent evidence. Each party shall use all reasonable efforts to obligate its Personnel to comply with this confidentiality provision. Nothing herein shall be construed as granting or conferring any right by license or otherwise to the receiving party in/to any Confidential Information disclosed hereunder except as specifically set forth herein. Upon the earlier of a party's request or any termination of this Agreement, the receiving party shall return to the disclosing party the Confidential Information and all copies thereof of the disclosing party.

14. Should Prosite engage an approved subcontractor to perform any of its obligations under the terms of this Agreement, Prosite shall obtain a Confidentiality Agreement from the subcontractor containing terms to protect Client's Confidential Information similar to those stated herein. Notwithstanding the above, any such Confidentiality Agreement executed by a subcontractor shall not relieve Prosite from its confidentiality obligations set forth in this Section 13.
15. Export Rules. Client agrees that the Software will not be shipped, transferred or exported into any country or used in any manner prohibited by the United States Export Administration Act or any other export laws, restrictions or regulations (collectively the "Export Laws"). In addition, if the Software is identified as an export controlled item under the Export Laws, Client represents and warrants that Client is not a citizen, or otherwise located within, an embargoed nation (including without limitation Iran, Iraq, Syria, Sudan, Libya, Cuba, North Korea, and Serbia) and that Client is not otherwise prohibited under the Export Laws from receiving the Software. All rights to use the Software are granted on condition that such rights are forfeited if Client fails to comply with the terms of this Agreement.
16. Governing Law. This Agreement will be governed by and construed in accordance with the substantive laws in force: (a) in the State of New York. This Agreement will not be governed by the conflict of law rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RIGHT TO A TRIAL BY JURY AND, INSTEAD, AGREES TO LITIGATE ANY DISPUTE DIRECTLY WITH A JUDGE SITTING AS A TRIER OF BOTH FACT AND LAW.
17. General Provisions. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of this Agreement, which shall remain valid and enforceable according to its terms. This Agreement shall not prejudice the statutory rights of any party dealing as a consumer. This Agreement may only be modified by a writing signed by an authorized officer of Prosite. Updates may be licensed to Client by Prosite with additional or different terms. This is the entire agreement between Prosite and Client relating to the Software and supersedes any prior representations, discussions, undertakings, communications or advertising relating to the Software. The captions and headings of the paragraphs of this Agreement are for convenience only and are not to be used to interpret or define the provisions hereof. The confidentiality, ownership of intellectual property, including copyright protection, warranty provisions and exclusions, limitations of liability, release and indemnity, and any other terms and conditions that are intended to survive termination shall survive termination or other expiration of this Agreement.
18. Software Escrow. Prosite agrees to keep and maintain current in escrow a master record of the Software and then quarterly thereafter, all updates, upgrades, and new releases thereof at Prosite's third party escrow agent. Prosite will deliver the Software to Prosite's third party escrow agent and a copy of the escrow agreement to Client 60 days after signing of this agreement. Client shall be added to the escrow account at Client's expense. Client shall receive written notification from Prosite, with confirmation from escrow agent, of being added to the escrow account and all notices of submissions of updates, upgrades and new releases into escrow by Prosite. Software will be released from escrow to Client at no additional charge in the event that Prosite has ceased doing business, or ceased to make maintenance of the Licensed Software available, or Prosite Software has been inaccessible for 3 continuous days without acceptable mutual plan for resolution; provided, however, that Client may only use the Software for the purposes described in this Agreement.
19. In the event of a conflict between this Agreement and any other agreement regarding the subject matter herein, the terms and conditions of this Agreement shall govern.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year signed below by the registered owner of the company or by an authorized member of the company.

CIRCUIT CITY STORES, INC.

By: \_\_\_\_\_

Printed Name \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_

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PROSITE BUSINESS SOLUTIONS, LLC  
732 3rd Street  
New Martinsville, West Virginia 26155

By: \_\_\_\_\_

Printed Name

Its \_\_\_\_\_

Date

JASON WARREN  
CEO  
4-20-06



AMENDMENT 1 to End User Software  
License Agreement



THIS AMENDMENT 1, dated as of April 9, 2007 (this "Amendment"), to the End User Software License Agreement, dated as of April 19, 2006 ("SoW"), by and between Prosite Business Solutions, LLC ("Prosite"), and CIRCUIT CITY STORES, INC. ("Client"). Unless the context requires otherwise, all capitalized terms used in this Amendment without definition shall have the respective meanings assigned to them in the SoW.

The parties hereby agree as follows [NOTE VARIATIONS BELOW]:

1. Section 3.2 of the SoW, shall be amended by adding the following:

Software usage is based upon the number of orders and / or number of users the software experiences. If the number of orders or users exceeds the agreed upon numbers set forth in paragraph 3.2 by 20% or more then the monthly rate to Circuit City will increase proportionately. The number of orders or number of users will be calculated based upon a rolling 6 month average. At the end of any month, Prosite will calculate the average number of monthly orders or users for the past six months and raise the Monthly Fee in 20% increments to proportionately match the percent increase in the software usage. The Monthly Fee will proportionately be reduced in the same manner if the six month average usage drops 20% below the usage rate used to calculate the most recent monthly rate. All rate adjustments will go into effect the following month. In no event will there be any adjustment unless the change is 20% or more from the prior month's rate and in no event may any reduction in monthly rate go below the Minimum Monthly Fee stated above. Notification of the rate increase will be given to Client at least twenty five (25) days prior to the next invoice.

Example: The number of unique users averaged 2,100 per month or the number of orders per month averaged 45,000 per month between August 1st and Jan 31st. This would constitute a 50% increase in usage. A Monthly Fee increase of 40% above the base rate would start for the month of March.

Additional Increase Example: If the average usage increased 65% calculated at the end of February then a Monthly Fee increase of 60% above the base rate would start for the month of April.

Reduced Usage Example: If the average usage dropped back down to 20% below the base numbers by the end of February then the Minimum Monthly Fee will apply.

Additional Reduce Example: If the average usage drops 18% from the said 6 month average as calculated for the previous month, there would be no reduction in the Monthly Fee.

2. The following fee shall be added to Section 1.1 of the SoW:

Customer Portal:

Prosite will build a web portal to allow unlimited Client customers to review, schedule their orders/tickets. These requirements are detailed in a separate SOW. The customer portal will have limited functionality and therefore the customer will not be considered ProBusinessTools users under this Agreement. Prosite will host this customer portal free of charge for the first ninety (90) days to determine the impact it has on its server resources. Prosite, at any time after the first ninety (90) days, may, upon sixty (60) days notice, require Client to pay for hosting the customer portal. Client will not be responsible for any customer portal fees prior to the effective date of such notice. In the event that Prosite and Client do not mutually agree on the customer portal hosting fees, Client may elect not to continue customer portal hosting and will not be responsible for any fees therefore. Client reserves the right, at no additional charge, to alternatively host the customer portal using a

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non-Prosite alternative. The Service Level Agreements set forth in Section 1.10 shall apply to the customer portal as well.

3. Except as amended by this Amendment, the SoW shall remain in full force and effect as originally executed and subsequently amended.

IN WITNESS WHEREOF, Supplier and Client have caused this Amendment to be executed as of the date first above written.

CIRCUIT CITY STORES, INC.

BY: [Signature]  
NAME: W. B. Luck  
TITLE: VP, IT Business Applications  
DATE: 4/21/2007

PROSITE BUSINESS SOLUTIONS, LLC

BY: [Signature]  
NAME: Cynthia Warren  
TITLE: COO  
DATE: 4/30/07